

### **Remark**

The Applicant respectfully requests reconsideration of this application as amended. Claims 2, 4, and 20 have been amended, and claim 14 has been deleted. Claims 1-13 and 15-20 are, therefore, presented for examination.

### **Objections**

**Office Action, Paragraphs 4-6.** The Examiner has objected to the application under 37 CFR 1.172(a) for failing to establish an ownership interest in the patent for which reissue is being requested. In compliance with 37 CFR 1.172(a), requiring all assignees consenting to a reissue to establish their ownership interest in the patent for which reissue is being requested, Applicants hereby submit “Statement Under 37 CFR 3.73(b)”, establishing an ownership interest in U.S. Patent No. 5,416,520 by one averring authority to establish such ownership on the Applicant’s behalf. As the Applicant believes this submission to overcome the Examiner’s objection, the Applicant respectfully requests such objection to be withdrawn.

### **35 U.S.C. §251 Rejections**

**Office Action, Paragraphs 7-10.** The Examiner has rejected claims 1-20 under 35 U.S.C. §251 as being based upon a defective reissue declaration under 35 U.S.C. §251. In particular, the Examiner states that it the reissue declaration is defective because it fails to: 1) contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid (Office Action, paragraph 7); 2) identify at least one error which is relied upon to support the reissue

application (Office Action, paragraph 8); 3) contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant (Office Action, paragraph 9).

Submitted herewith is a declaration executed in accordance with 37 CFR 1.175. With respect to #2, please note that M.P.E.P. §1402 states that an "attorney's failure to appreciate the full scope of the invention" is an error correctable through reissue. *In Re Wilder*, 736 F.2d 1516, 222 USPQ 369 (Fed. Cir. 1984). As such, the Applicant respectfully requests that the Examiner withdraw his objection to claims 1-20 as being based upon a defective reissue declaration under 35 U.S.C. §251.

### **35 U.S.C. §112**

**Office Action, Paragraph 12.** The Examiner has rejected Claim 20 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner states that at line 7, "the one or more characteristics" shows no clear antecedent basis.

Claim 20, as amended, reads:

20. A method of transmitting real-time data over a network comprising the steps of:  
encoding the real-time data by determining the differences between the real-time data and a transmit reference to produce differential data;  
storing the differential data in one of a plurality of output buffers;  
selecting one of the plurality of output buffers as a current transmit buffer by determining whether the differential data in a particular transmit buffer accommodates one or more characteristics of the network better than differential data in at least one other buffer of the plurality of output buffers; and  
transmitting differential data from the current transmit buffer over the network.

The Applicant respectfully submits that claim 20, as amended, overcomes the Examiner's rejection. Applicant respectfully submits, therefore, that the rejection to claim 20 be withdrawn.

### **Conclusion**

The Applicant respectfully submits that the rejections and objection have been overcome by the amendment and remark, and that the claims 1-13, and 15-20 as amended are now in condition for allowance. Accordingly, Applicant respectfully requests the rejections and objections be withdrawn and the claims as amended be allowed.

### **Invitation for a Telephone Interview**

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request for an Extension of Time**

The Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

**Charge our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP



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